5th Amendment
ORS 174.010
ORS 697.005(1)(a)(A)
ORS 697.005(1)(b)(L)(ii)
ORS 697.005(4)
ORS 697.015
ORS 697.031
ORS 697.087(1)
ORS 697.095
FRCP 65(d)
collection agency
due process
factor
factoring services
statutory construction

Shelton v. Krysl (In re Krysl)

Ninth Cir. No. 04-35658 Adversary Proceeding No. 02-6244-aer

6/23/06 Ninth Circuit Unpub.-Text in Westlaw at 2006 WL 1737221 (aff'g Aiken(311 B.R. 566) who aff'd Radcliffe (304 B.R. 425))

Plaintiff, as assignee of a claim he purchased, brought suit under 11 U.S.C. §§ 523 and 727 to except a debt from discharge and to deny Debtors' full discharge.

Debtors/Defendants moved to dismiss for lack of standing and also sought in a counterclaim to enjoin Plaintiff from acting as a "collection agency" until he had registered under Oregon law.

The Bankruptcy Court held for Defendants. The complaint was dismissed and Plaintiff was enjoined from acting as a collection agency in the State of Oregon unless and until he registered with the Oregon Department of Consumer and Business Services under ORS 697.031. On appeal, the District Court affirmed. It concluded under the facts that Plaintiff was engaged in soliciting claims and thus was required to register with the state as a collection agency unless he fell within a statutory exemption/exclusion.

On further appeal, the Ninth Circuit affirmed, holding, Plaintiff, in general fell within the definition of "collection agency" for purposes of the statute. The court then adopted the District Court's analysis (311 B.R. 566) on all issues raised by Plaintiff. See E04-11 for summary of District Court opinion.

FILED

JUN 23 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LEE R. SHELTON, Plaintiff - Appellant, v. KATHERINE A. WILSON (KRYSL) and PHILIP L. KRYSL, Defendants - Appellees.	No. 04-35658 D.C. No. CV-04-6128-AA MEMORANDUM[*]

Appeal from the United States District Court
for the District of Oregon
Ann Aiken, District Judge, Presiding

Argued and Submitted May 2, 2006
Portland, Oregon

Before: TASHIMA, and W. FLETCHER Circuit Judges, and POLLAK[**], District Judge.

Appellee Katherine Wilson owed $636.87 to ATEZ, an asbestos removal firm. On March 18, 2002, appellant Lee Shelton purchased the claim from ATEZ.

---

[*] This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

[**] The Honorable Louis H. Pollak, Senior United States District Judge for the Eastern District of Pennsylvania, sitting by designation.

Subsequently, Wilson and her husband, appellee Philip Krysl, filed for bankruptcy under chapter 7 in the Oregon Bankruptcy Court. Wilson and Krysl listed Shelton as an unsecured creditor. Shelton initiated an adversary proceeding seeking to bar discharge of his claim. Wilson and Krysl contended that Shelton lacked standing to bring the adversary proceeding because he was not, with respect to the claim at issue, a "creditor" within the meaning of 11 U.S.C. § 523(a). Shelton lacked "creditor" status, so it was argued, because (1) he was, within the intendment of the governing Oregon statute, a "collection agency," namely "any person directly or indirectly engaged in soliciting claims for collection, or collecting or attempting to collect claims owed, due or asserted to be owed or due to another person or to a public body," Or. Rev. Stat. § 697.005(1)(a)(A), but (2) had not registered with the Oregon Department of Consumer and Business Services as collection agencies are required to do before engaging in debt collection. Or. Rev. Stat. § 697.015. Shelton, in response, contended that he was exempt from the registration requirement because he came within an express statutory exclusion from the definition of "collection agency," – namely, an exclusion of persons engaged in "factoring services," which the statute defines as "[s]oliciting or collecting on accounts that have been purchased from commercial clients under an agreement[.]" Or. Rev. Stat. § 697.005(1)(b)(L)(ii). Shelton argued that ATEZ's

written assignment to him of the of the $636.87 indebtedness constituted the necessary "agreement."[1]

In a thoughtful and well-crafted opinion – an opinion which analyzed the text, the commercial context, and the legislative antecedents of the Oregon statute in scrupulous detail – Chief Bankruptcy Judge Radcliffe found Shelton's contention lacking in merit:

> If Plaintiff's interpretation prevails, (and all that is required is an agreement to sell or assign an individual account), then the exclusion, in essence, consumes the whole. Any "collection agency" could qualify for the statutory exclusion for providing "factoring service". . . . Here, Plaintiff admits that he had no underlying financing agreement or any other agreement for the purchase of ATEZ's accounts. Accordingly, the court concludes that Plaintiff satisfies the definition of a collection agency but does not qualify for the exclusion for the providing of "factoring services."

In re Krysl and Wilson, 304 B.R. 425, 431 (Bankr. D. Or. 2004).

---

[1] For the first time on this appeal, Shelton also argues that he does not qualify as a "collection agency." Though it is not clear that this argument was properly presented before the District Court, we now summarily reject this claim because Shelton's relationship with both ATEZ and Wilson/Krysl falls squarely within Oregon's definition of "collection agency." One qualifies as a "collection agency" by engaging in either of two acts. First, an individual who is "soliciting claims for collection" qualifies as a collection agency, and Shelton came within this definition when he solicited ATEZ for the disputed claim so that he might collect on it. Or. Rev. Stat. § 697.005(1)(a)(A). Second, the Oregon legislature also describes a collection agency as any individual who is "attempting to collect" the claims "asserted to be owed" to another party, which is what Shelton is currently trying to do by way of this litigation. *Id*. Consequently, Shelton is acting as a collection agency in his relationship with ATEZ and Wilson/Krysl.

Shelton appealed to the Oregon District Court. In an equally thoughtful opinion, District Judge Aiken agreed with the Bankruptcy Court's holding that Shelton is an unregistered collection agency that does not qualify for the "factoring services" exemption. *In re Krysl and Wilson*, 311 B.R. 566, 569-72 (D. Or. 2004). Judge Aiken also rejected Shelton's newly raised constitutional due process claims.[2] *Id*. at 572.

Having conducted a *de novo* review of the record, *Buono v. Norton*, 371 F.3d 543, 545 (9th Cir. 2004), we agree with and will adopt the district judge's analysis on all claims raised by Shelton in this appeal.

AFFIRMED.

---

[2] Shelton argues that he was deprived of his Fifth Amendment right to due process because he claims to have not received proper notice that an injunction might issue at a hearing held on April 14, 2003. Such notice, he asserts, would have allowed him to call helpful witnesses on his behalf. Shelton additionally argues that he was denied the opportunity to assert two affirmative defenses to Wilson and Krysl's counterclaims. Judge Aiken properly found these claims to be without merit.